



House of Representatives

General Assembly

File No. 286

February Session, 2006

Substitute House Bill No. 5567

House of Representatives, March 31, 2006

The Committee on Environment reported through REP. ROY of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE SEIZURE OF MILK PRODUCTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22-129 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2006*):

3 The Commissioner of Agriculture or [his deputy] the
4 commissioner's duly authorized agent shall prohibit the sale or
5 offering for sale or distribution of any cheese, milk or other milk
6 product which is insanitary or detrimental to health, and which has
7 not been produced, processed, cared for or handled in the manner
8 prescribed in this chapter and in chapter 431 and by the regulations of
9 the Milk Regulation Board.

10 Sec. 2. Section 22-129a of the general statutes is repealed and the
11 following is substituted in lieu thereof (*Effective October 1, 2006*):

12 (a) The Commissioner of Agriculture or the commissioner's duly
13 authorized agent may seize, destroy, dispose of or [quarantine]

14 embargo any milk, [or] milk product or cheese that does not comply
15 with the provisions of this chapter, chapter 431 or regulations adopted
16 hereunder or pursuant to chapter 431 and is deemed to be unfit or
17 unsafe for use as a food or is a threat to public health.

18 (b) Whenever the commissioner finds or has probable cause to
19 believe that any milk, [or] milk product or cheese is adulterated,
20 misbranded or deleterious to health, [he] the commissioner or the
21 commissioner's duly authorized agent may affix to such milk, [or] milk
22 product or cheese a tag or other appropriate marking, giving warning
23 that such milk, [or] milk product or cheese is or is suspected of being
24 adulterated or misbranded. No person shall remove or dispose of such
25 milk, [or] milk product or cheese by sale or otherwise without the
26 express permission of the commissioner or [his] the commissioner's
27 duly authorized agent. [Before destruction or other disposition of
28 perishable fluid milk or milk products, the commissioner shall conduct
29 a hearing for the owner or custodian of such milk or milk product to
30 show cause why such milk or milk product should not be destroyed or
31 disposed of in a manner authorized by the commissioner. Notice of the
32 hearing shall be in writing and shall be served upon the owner or
33 custodian not less than forty-eight hours before such hearing.] Not
34 later than twenty-four hours after such tagging or marking, the
35 commissioner or the commissioner's duly authorized agent shall notify
36 the owner or custodian of such milk, milk product or cheese of the
37 commissioner's or the commissioner's agent's findings, or of any
38 violations or proposed disposition and of the right to a hearing. Any
39 person aggrieved by an order of the commissioner may request a
40 hearing before the commissioner not more than five days after the
41 issuance of such order. The hearing shall be conducted not [more] later
42 than [ten] twenty days after the tagging or marking of any milk, milk
43 product or cheese and not [more] later than [three] ten days after the
44 tagging or marking of any perishable fluid milk.

45 (c) Following such hearing the commissioner shall make a
46 determination as to whether such milk, [or] milk product [is unsafe] or
47 cheese complies with the provisions of this chapter, chapter 431 and

48 any regulations adopted pursuant to this chapter or chapter 431 and is
49 safe for use as a food. [or is detrimental to public health and] If the
50 commissioner determines the milk, milk product or cheese is unsafe or
51 unfit for use as food, the commissioner may order the owner or
52 custodian to destroy or dispose of such milk, [or] milk product or
53 cheese. The commissioner or the commissioner's duly authorized agent
54 shall supervise the destruction or other disposition of such milk, [or]
55 milk product or cheese. If the commissioner finds the milk, milk
56 product or cheese is safe for use as food and is not detrimental to
57 public health, or can be properly packaged, marked or otherwise
58 brought into compliance with the provisions of this chapter, chapter
59 431, or any regulations adopted pursuant to this chapter or chapter
60 431, the commissioner may order such milk, milk product or cheese to
61 be so packaged, marked or otherwise brought into compliance and
62 may thereafter authorize the release of such milk, milk product or
63 cheese. The owner or custodian of such milk, [or] milk product or
64 cheese shall pay the costs of storage, handling and other incidental
65 expenses.

66 (d) A certificate of analysis from a laboratory of the Department of
67 Public Health, the Agricultural Experiment Station, the United States
68 Food and Drug Administration, the United States Department of
69 Agriculture or The University of Connecticut Veterinary Medical
70 Diagnostic Laboratory or other certified laboratory acceptable to the
71 commissioner shall be considered prima facie evidence of the
72 ingredients and constituents of a sample of milk, milk product or
73 cheese.

74 [(d)] (e) Any person aggrieved by the determination of the
75 commissioner may appeal therefrom in accordance with the provisions
76 of section 4-183.

77 [(e)] (f) The commissioner shall not be liable for any damages
78 caused by the seizure, embargo, destruction, tagging or marking of
79 any milk, [or] milk products or cheese pursuant to this section unless a
80 court finds there was no probable cause for such tagging or marking.

81 Sec. 3. Section 22-153 of the general statutes is repealed and the
82 following is substituted in lieu thereof (*Effective October 1, 2006*):

83 (a) No person shall, by himself, his employee or agent, sell or
84 exchange, or offer for sale or exchange, or have in his possession with
85 intent to sell or exchange any milk which is misbranded or any milk,
86 milk product or cheese diluted with water or adulterated by [the
87 addition of] any foreign substance, or shall knowingly [deliver or offer
88 for delivery milk that is tainted or partly sour to any customer buying
89 the same for milk] sell, distribute, exchange or offer for sale any milk,
90 milk product or cheese not produced in compliance with the
91 provisions of this chapter or chapter 431.

92 (b) No municipality or subdivision thereof shall require a dealer to
93 place on any bottle, container or label any words, designs or
94 illustrations which are not approved, required or permitted by the
95 Milk Regulation Board.

96 (c) Milk, milk products or cheese shall be deemed to be misbranded
97 when [it is] they are not labeled with the name and address of the
98 dealer, the common name of the product and any other labeling
99 prescribed by the general statutes or the regulations of the Milk
100 Regulation Board. The display or appearance of words, designs or
101 illustrations on the label which are not so approved or prescribed shall
102 also constitute misbranding.

103 [(d) The use of materials in the processing of flavored milks, or the
104 addition of approved vitamin A and D units in the processing of milk,
105 low-fat milk or other milk products, or the use of materials, vitamins
106 or other substances in grades or types of milk having the approval of
107 the Milk Regulation Board shall not constitute adulteration under this
108 section.]

109 (d) No milk dealer licensed pursuant to section 22-229 shall accept
110 milk, milk products or cheese from any person, firm or corporation
111 whose license or permit to produce, distribute or process milk, milk
112 products or cheese is suspended or has been revoked.

113 (e) Any person who violates any provision of this section [shall]
114 may be assessed a civil penalty in accordance with the provisions of
115 section 22-7.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	22-129
Sec. 2	<i>October 1, 2006</i>	22-129a
Sec. 3	<i>October 1, 2006</i>	22-153

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Department of Agriculture	GF - Cost Avoidance	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill eliminates a mandatory hearing requirement concerning seized milk or milk products which could result in a minimal potential cost savings to the Department of Agriculture.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5567*****AN ACT CONCERNING THE SEIZURE OF MILK PRODUCTS.*****SUMMARY:**

This bill makes several changes to laws regulating milk and milk product safety.

It eliminates a mandatory hearing for milk or milk products that the agriculture commissioner or his agent seized for being unsafe, but it allows the product owner or custodian to request one within five days of the seizure order. By law, anyone aggrieved by the commissioner's determination at that hearing may appeal to Superior Court.

The bill also (1) specifies what the commissioner must review when determining whether seized milk or milk products, including cheese, are safe for consumption as food and (2) establishes a process to follow when he determines that such products are safe.

By law, the commissioner must prohibit the sale or distribution of milk or other milk products that (1) are not sanitary or are detrimental to health and (2) that have not been produced, cared for, or handled as the law requires. The bill extends these prohibitions to cheese; adds offering these products for sale to the prohibitions; and specifies that not processing them as required by law, including laws concerning the milk industry (e.g., licenses to do business as a dealer, subdealer, or cheese or yogurt manufacturer), is prohibited. The bill also adds milk industry laws to those with which milk, milk products, and cheese owners or custodians must comply or face (1) seizure of their product as unfit or unsafe for food use or as a threat to public health or (2) a civil penalty. It allows the commissioner's duly authorized agent to prohibit the sale or distribution of such milk or other milk products,

instead of his deputy.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2006

SEIZURE OF MILK, MILK PRODUCTS, AND CHEESE

Tagging or Marking

The bill extends to cheese the agriculture commissioner's existing authority to seize, destroy, dispose of, or quarantine any milk or milk product that does not comply with state laws and regulations, including those concerning the milk industry, and is considered unfit or unsafe for consumption or a threat to public health. The bill specifies that the commissioner's agent may take the same actions under the same conditions. It authorizes an embargo instead of a quarantine.

The bill also extends to cheese the commissioner's authority to tag or otherwise mark any milk or milk products with a warning that the milk or product is, or is suspected of being, adulterated or misbranded. The bill allows the commissioner's agent to do the marking.

Under current law, the commissioner is not liable for any damages caused by marking or tagging the milk and milk product unless a court finds there was no probable cause for doing so. The bill expands the exemption to also cover any damages caused by the seizure, embargo, destruction, of milk, milk products, or cheese or the tagging or marking of cheese, unless a court finds there was no probable cause for tagging and marking.

Hearing

Current law requires the commissioner to conduct a hearing for the owner or custodian of the seized milk or milk products to show why they should not be destroyed. Hearing notice must be served in writing no later than 48 hours before the hearing. The commissioner must hold the hearing within 10 days after tagging or marking the milk product and no later than three days for perishable fluid milk.

The bill removes this mandatory hearing. It instead requires the commissioner or his agent, no later than 24 hours after tagging or marking the product, to notify the product's owner or custodian of his findings, any violations, or a proposed disposition, and the right to a hearing. It allows anyone aggrieved by the commissioner's order to request a hearing not later than five days after he issues it. The bill increases the time the commissioner has to hold the hearing to not later than 20 days from tagging and 10 days for perishable fluid milk. It extends this process to cover cheese.

Current law specifies the process after a hearing. Following a hearing, the commissioner must determine whether the milk or milk product in question is unsafe for consumption as food or detrimental to public health. He may order the owner or custodian to destroy or dispose of the milk or milk product, which he must supervise.

The bill requires the commissioner, after a hearing, to determine if the milk, milk product, or cheese complies with statutory and regulatory requirements and is safe for use as food. It specifies that a certificate of analysis from one of several entities is evidence that on its face shows the ingredients and constituents of a milk, milk product, or cheese sample. Those entities include the Department of Public Health, the Agriculture Experiment Station, the U.S. Food and Drug Administration, the University of Connecticut Veterinary Medical Diagnostic Laboratory, or other certified laboratory that the commissioner accepts.

Under both current law and the bill, the owner or custodian must pay the costs of storage, handling, and other incidental expenses.

Determination

By law, if the commissioner determines the milk, milk product, or cheese in question is unfit for food use he may order the owner to destroy or dispose of it and must supervise its destruction. The bill allows the commissioner's agent to supervise the destruction.

The bill also specifies what the commissioner must do if he finds the

milk, milk product, or cheese is safe. If he finds it is safe for food use and not detrimental to public health, or that it can be properly packaged, marked, or otherwise brought into compliance with the law, he may order it to be packaged, marked, or otherwise brought into compliance and may then authorize its release.

COMPLIANCE

Current law prohibits anyone from selling or exchanging, offering for sale or exchange, or possessing with intent to do either, milk that is misbranded, diluted with water, or adulterated by any foreign substance. The bill adds milk products and cheese to this prohibition. It also specifies that knowingly selling, distributing, exchanging, or offering for sale any of these products that are not produced in compliance with state law, including those for the milk industry, is prohibited.

It also prohibits licensed dealers from accepting milk, milk products, or cheese from anyone whose license or permit to produce, distribute, or process these products is suspended or revoked. The bill allows, instead of requires, the assessment of a civil penalty for violators.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/10/2006)